# Punishment Policy in the Vedic Tradition

The Realistic Aspect of Indian Spirituality

**Sunil Sondhi**
Tagore National Fellow
Indira Gandhi National Center for the Arts

## Introduction

A simplistic and superficial view of Indian culture and civilisation is that it is spiritual rather than realist. An excessive dose of religiosity and disregard of material interests are talked of as the characteristic features of the Indian mind in which spiritual perspective is seen as incompatible with aggressive defence of basic values of individual and social life. These interpretations of Indian temperament are not at all borne out by facts of Indian history. It seems that adequate attention has not been given to the study of the *Vedas, Mahabharata, Ramayana, Dharmasastras*, *Arthasatsra*, *Niti-Shastras,* and other treatises on warfare, law enforcement and diplomacy.

Binoy Kumar Sarkar used the term "Transcendentalized Positivism" for the Indian ideal of synthesis and harmony of practical and the spiritual, particular and the universal.[1] Sarkar saw in the *Smriti, Niti, Artha, and* literature, the same vigour in social life, the practical and positive outlook, and the emphasis on "moral duties" that characterizes the *Shruti* literature in the *Vedas* and *Upanisads,* whose ambition was no less than that of connecting with not only the "lithosphere from sea to sea, but also the atmosphere and the skies", and realization of the transcendental in and through the immanent, and freedom through the law.[2]

S. Radhakrishnan was more forthright, "We cannot say that violence is evil in itself. Destruction is not the aim of fighting in all cases. When its aim is human welfare, when it respects personality, then war is permissible. If we say that the criminal's personality should not be violated, even when he violates the personalities of others, if we treat the gangster's life as sacred, even when he brings about the destruction of several lives more valuable than his own, we acquiesce in evil. We cannot judge the use of force, as good or bad, by looking upon it in isolation".[3]

In Indian tradition use of *dandaniti*, or punishment policy, is considered an obligation to check the criminal, protect the helpless, and restore social order. Such a use of force is considered constructive as it strengthens orderly conduct by restraining disorderly behaviour. It works for the ultimate good of both the individual and the society. Law enforcement action against willful internal and external threats is necessary for the protection of political, economic, and cultural system of a society against forces of disruption and anarchy, and for proactive promotion of common good.

---

[1] Positive Background, p.7
[2] ibid. p.15.
[3] Radhakrishnan, p.203

## Vedic Roots

The Vedas give us a hierarchy of different levels of reality down from the all-embracing absolute, which is the primary source as well as the final consummation of the world process. The different kinds of being are seen as the higher and lower manifestations of the one absolute spirit. There is correspondence or underlying unity between the absolute and the relative, the unmanifest cosmic reality is not separate or isolated from the objective reality. Whatever is in the cosmos and beyond is essentially true in the individual also. Whatever is stated of the cosmic reality is applicable to the human body, and each individual is spoken of as a descendant of the cosmos. [4]

The universal is collective. The collective is of no importance without the particular and the latter cannot exist without the former. If the collective is not manifested in creative individuality, and it remains enclosed within its rigid unity, it would neither be the universal nor the highest power. The collective and the individual are not exclusive. One cannot exist without the other; individuality is the fulfillment of the collective; the collective is the underlying foundation and the individual human being is its highest manifestation. The collective is ever seeking its consummation in the individual. As Tagore summed it up "You without me, I without you are nothing".[5]

Vedic sages realized the overarching presence of *rta*, an invisible cosmic law that held together in order a complex and adaptive system at different levels, forms, and phases of all the objects and processes that comprised the cosmos. All the forms of being existing and developing in harmony within an interconnected web of relationships were seen as organized in a system which integrated all the parts into an undivided whole in flowing movement. The cosmic order which extended to all levels of existence from the infinite to the infinitesimal was seen as inviolable, never to be broken, even by the Vedic divinities who were in fact considered as the guardians of *ṛta*.[6]

The Rgvedic concept of *rta* is one of cosmic order: all the various aspects of nature, visible and invisible, work together in concerted action, whether consciously or unconsciously, towards establishing in all the spheres of manifested existence a perfect wholeness, ordered activity, oneness, the reflection of the Transcendent. At the human level the establishment of orderly conduct and harmonious relationships in society is man's attunement to the cosmic order. Such relationships imply a common order of ethics, justice and law, acceptable to all.

There are a several hymns in the Vedas with expressions of overwhelming power and victorious might to restore order. These hymns call upon Indra, Agni, and a series of gods and other powers to destroy all manner of threats to the social and cultural system, in all manner of creative ways. In the course of the hymns the focus shifts from exclusive concentration on gods to warriors and the inspiration of Indra's model for the society to perform proactively in battle. While gods are first addressed in the verses, it is in the application of their behavior to that of men and the transference of their skills and courage to them that its realism comes to the fore.

---

[4] RV, 1.164.4-5.
[5] Tagore, 113).
[6] Menski, p.90

About the battles and the response towards enemies the Vedas say, “May Indra aid us when our flags are out; may our arms be victorious. May our brave warriors come home with flying colors and protect us in the din of battle. Confusing the minds of our enemies, seizing their bodies. Attack them, confound them. Let our foes abide in utter darkness. We do not hate the conquered enemy; may we enjoy peace and security. Whosoever with an unholy mind tries to injure us, bragging about his might among princes, let not his deadly blow reach us. May we humble the wrath of the boastful miscreant”.[7]

A long hymn at the end of Mandala VII of Rg Veda calls upon several gods like Agni and Indra to destroy all threats to the social and cultural system. “Let not the misguided rise and spread out, let them be subjected to justice and punishment. Let the sinner and the criminal, the supporter and admirer of sin and crime along with the sin and crime, and the tormentor of the good and innocent face the force of discipline, punishment, or elimination. Never compromise with the enemy of nature, divinity, humanity and the wisdom of humanity. Root out the man of hate and evil. For them, have the treatment they deserve and either correct them or eliminate them. Punish the evil doer so that by reason of that punishment no one again may raise his head for evil doing. Use your full powers with patience, fortitude and courage. You righteous passion should be for the destruction of evil and sabotage against life and social harmony”. [8]

From heaven and earth bring righteous laws of punishment and correction against sin and crime, and against the supporters of sin and crime as well as against sympathisers with injustice and evil. Give incentive and encouragement for the righteous, and fearsome prohibitions for the adamant evil so that you nip and bury rising crime and evil in the bud. With power and force, look all round, search for the criminals and use your weapons of defence and offence, and with fiery, thunder-tipped, fatally destructive, irresistible and inviolable weapons fix the voracious enemies. Strike them on the rise and crush them into dust, sending them into silence and oblivion without uttering a sigh of pain or voice of protest.[9]

It also asks for vigilance against the enemies and their prompt destruction, “Let us be watchful and alert against the malignant, evil and treacherous forces, and ward them off and eliminate them with the fastest interception and destruction at the very outset. Let there be no peace for the evil doer whoever any time may try to injure, sabotage or enslave us out of jealousy, malignity or enmity”.[10]

Attacks on our social system through misinformation are to be repulsed effectively and decisively, “If there are those who intentionally malign, and defame the man of purity, truth and immaculate honour and spotless reputation, or with their powers and prestige denigrate the man of goodness and charitable action and bring disgrace upon him, deliver such men to the isolation of darkness. Whoever injures or impairs vigour and power of our social system, let such an enemy, the saboteur, be reduced to nullity and himself suffer debility of body and even deprivation from self-extension and further growth”.[11]

---

[7] Nikhilananda, p. 221.
[8] RV 7/104, 1-3.
[9] Ibid. 7/104, 4,5.
[10] Ibid. 7/104, 7.
[11] Ibid. 7/104, 9-10

The fight is against forces of truth, order and harmony, both external and internal, "destroy the evil and the wicked and also the one who speaks the untruth, since both the evil and the liar end up in the bonds of Indra, the god of justice and power. If I were a sinner on the move, and if I troubled any person in life, then let me suffer death today just now. But I am not such, nor have I done so. Whoever says that I am a devil even though I am not a devil, and whoever says that he is innocent even though he is a sinner, may Indra, god of power and justice, punish such a person with his mighty vajra. May such a liar fall to the deepest darkness as the worst of all living beings".[12]

The social organisations are asked to be vigilant and active to keenly look for the forces of evil and violence, and then, bring to justice all those who disrupt the divine yajnas of solidarity and collective effort for creative work and advancement. "Forces of power and justice, from the light of heaven and wisdom of the sages, may seize the wicked and the destroyers and punish them with the vajra of justice and correction, tempered with help for peace and progress to enlighten the noble people dedicated to harmony and happiness".[13]

Indra, the commander of power and force, is asked to sharpen *vajra,* his weapon of justice and punishment for the crafty saboteurs on the lurk and strike the fatal blow. "His power throws off the saboteurs who damage the social and cultural system of peace and progress of the human community. He is mighty powerful like what the axe is for the wood, breaking down the evil and wicked destroyers like pots of clay whenever they raise their head".[14]

The concluding verse of the hymn calls for united action to decimate the wicked enemy. "We should crush the evil and the wicked like pieces of clay with a stone. They are covert, stealthy, clever, jealous and growling, cruel, cunning and voracious destroyers. Let not wicked demonic forces harm and destroy us. Repulse the darkness of oppressors harming us either by joint force or by sowing dissension. May the earth protect us against earthly sin and crime. Let the sky protect us against dangers from above. We should stay awake and watch everything that happens and strike the sinful destroyers, and shoot the vajra upon the covert saboteurs".[15]

These numerous references to punishment in the Vedas recognize the following fundamental elements of punishment policy:

(a) a standard of morality of which any violation warrants punitive retribution;
(b) the possibility of its violation which is considered as immoral;
(c) answerability for the violation which determines the guilt of the accused;
(d) degrees of guilt as determining the forms and severities of punishment; and
(e) authorized forms in which punishments may justly be administered.

Even in its remotest sources in the Vedas, punishment policy bears signs of being distinctly contextual and adaptive taking into account the varying conditions of time and place. This progressive nature of punishment policy was further elaborated and made more nuanced in the epics*, arthasastra*, and the *dharmasastra*.

---

[12] Ibid. 7/104, 15-16
[13] Ibid. 7/104, 18-19
[14] Ibid. 7/104, 20-22
[15] Ibid. 7/104, 23-25

## Righteous War

Mahabharata is replete with references to punishment policy as forming an essential part of royal policy. There is never a doubt entertained in Mahabharata as to the efficacy of punishment in creating and maintaining social order. Its source is divine, its study and cultivation a primary duty of the ruler, and its application by the ruler is to be guided and controlled by definite principles. Prominent among these is the principle that penal law is to be closely controlled by considerations of social good. Punishment is divested of its character of mere afflictiveness and stands for the means of ensuring the safety of society and individual. Its object is not to inflict pain but to eradicate evil. From the Vedic days onwards the state stood guarantee for social environment conducive for individual self-realisation.

Mahabharata considers *dandaniti* or punishment policy as essential for the realisation of three objectives of dharma, artha, and kama. Punishment policy is based on wisdom and has emerged from the Sarasvati. With the use of the punishment, this policy protects the worlds. It rewards dharma and punishes adharma around the world. It is known as *dandaniti* or punishment policy and the worlds follow it. In the extensive corpus of learning in punishment policy, the means of protecting oneself against aides, protecting oneself against rivals, the use of spies and other methods and the use of secret agents are separately indicated. All the techniques of *sama, dana, danda, bheda* and the fifth one of *upeksha* are completely laid down. All the secret methods of creating dissension have been described, and also when these secret methods may fail and recourse to war will be necessary.[16]

To avert the fratricidal war conciliation was used first to prevent dissension in the family of the Kurus and ensure the welfare of the subjects. When peace was not acceptable, through eloquence and counsel efforts were made to create disunity among the kings so that a division could be created and the objective of avoiding war could be achieved. Finally, an offer was made of giving up the claim for entire kingdom in return for just five villages. When even this offer for peace was not acceptable and Duryodhana was not willing to give up the kingdom without a war, the last resort of punishment was chosen. The Pandavas were left with no option except to do what was appropriate under the circumstances.[17]

No account of punishment policy in the Vedic tradition can fail to notice the *Arthasastra* of Kautilya. The connotation of *Arthasastra* is of *dandaniti* or punishment policy. This work is veritable reservoir of pragmatic rules relating to suppression of criminals; conduct of war; secret practices; and foreign policy.

The guiding principles which governed the Kautilyan policy on war were:
(i) The ruler shall augment his resources and power in order to ensure the security of the state; (ii) In case of conflict all resources and power are to be used to eliminate the enemy; (iii) All states who help in the augmentation of power are friends; (iv) a prudent course is to prefer peace and use war as a last resort; and (vi) state policy in victory and in retreat must be balanced as the situation will never be certain and strength will always be a determinant of security.[18]

---

[16] MB 12.59-77.
[17] MB, 3.150.
[18] Arthasastra, 6.2

## Institutionalisation of Punishment

While antecedents of punishment policy can be traced to the Vedas, Mahabharata and Arthasatra, its institutionalisation can be seen clearly in the Dharmasastra. Legal institutions indicate a shift in emphasis from self-discipline to enforced discipline. Gradually, the centre of gravity of conforming to the cosmic order moved from individual duties to institutional handling of punishment policy as a major instrument of justice. While self-discipline remained the bed rock of social order, enforcement of punishment policy became necessary to deter violations.

The Dharmasastra texts are the products of different and widely separated ages from around 500 B.C. to 500 A.D.[19] A few of them are very ancient and were composed more than two thousand five hundred years ago. Such are the Dharmasutras of Gautama, Apastamba, and Baudhayana, and the *Manusmrti*. These were followed by such Dharmasastra texts as the those of *Yajnavalkya*, Parasara, Narada. All these smrtis are not equal in authority. If we are to judge of the authority of a text by the commentaries thereon, then the *Manusmrti* stands pre-eminent. Next to it is the *Yajnavalkya*smrti. [20]

There is diversity of views between and within the Dharmasastra. These apparent contradictions result from different meanings of Dharma in different situations. The contextuality of Dharma makes it possible to prescribe a series of different rules, for different places and times for the same person. For instance, false evidence given by a witness can lead him to darkness of hell.[21] Sometimes, false evidence becomes a divine assertion.[22] Similarly, he who commits violence is regarded as the worst offender,[23] but the one who strikes in the cause of right incurs no sin.[24] Also, one should forsake wealth and desires, if it violates Dharma, but even Dharma if it is inhumane or may cause suffering in future.[25] Dharmasastra is to be obeyed for the sake of human wellbeing not for its own sake.

*Smrtis*, as the very name implies, are law-books written down from memory, bringing together therein, in more intelligible language, and within a smaller compass, all the teachings that lay scattered through the vast literature of the Veda.[26] *Smrtis* mark the second stage in the development of Hindu Law. As the community expanded and inhabited diverse and remote tracts of the land. This gave rise to a large number of *Smrtis* being compiled and promulgated side by side in different parts of the country to suit the needs and conditions of the several peoples. This may be one of the reasons for the view held by later writers that all *Smrtis* are equally and universally binding.[27]

This same adaptability is also shown by the fact that while every *Smrti* deals in the main with what the author regards as perfect or ideal dharma, it always has a section

---

[19] Kane, I, 304.
[20] Ibid., I, 306
[21] Manusmriti 8.94.
[22] Ibid., 8.103.
[23] Ibid. 8.345
[24] Ibid. 8.349.
[25] Ibid. 4.176
[26] Jha, p.3.
[27] Ibid..
27 Ibid. p.7.
28 ibid. p.62

dealing with what has been called ‘apaddharma,' or Dharma during difficulties wherein the peculiar circumstances of the man are fully considered and his duties laid down in accordance with them. Manu himself has a section on ‘Apaddharma’ [28] Coming to the later Nibandhas or Digests, we find that these also bear ample testimony to the spirit of selection and adaptability. They are quite free in admitting or rejecting the authority of the original Smirti, or even Shruti texts; when they do not find a certain text suitable to their theme, they try to explain it away in various ways.

From the above it is clear that the centre of gravity of authority, which originally rested entirely in the Shruti, gradually shifted from Shruti to Smrti, from Smrti to custom, and finally to the writings of a few learned and very modern authors. All this points to the fact that in the domain of Law, there has all along been a progressive spirit at work. That this is not a mere conjecture, but a fact recognised in the highest circles of society in this country, is proved by the declaration of Parashara to the effect that “The dharmas for men in the Satayuga are other than those in the Treta and the Dvapara; and in the Kaliyuga also they are different -the Dharma of each Yuga being in keeping with the distinctive character of that age.”[29]

Similar declaration is found in Manu, with this important variation that instead of saying that “the Dharma of each Yuga is in keeping with the distinctive character of that age,” he says that “the difference in Dharma is due to the gradual decay evinced in the character of the people of each age.” *Viramitrodaya* explains this to mean that the Dharmas peculiar to each Yuga differ on account of the difference in the capacities of the men called upon to observe those Dharmas. “The Dharmas for the Satyayuga are those prescribed by Manu ; for the Treta those by Gautama : for the Dvapara those by Shankha-Likhita ; and for the Kali those by Parashara.”[30] This view is supported by Baudhayana, who says — One should perform the necessary duties, so far as he is capable of doing and also the Kurmapnrana — ‘One should perform his duties in accordance with one’s capacity.’

In view of such contextual differences in the application of Dharma, rational interpretation of Dharmasastra is suggested. Manusmriti says that if a man explores, by reason, the Vedic teaching regarding Dharma, he alone, and no other, understands Dharma.[31] Brihaspatismriti categorically rules that if a decision is arrived at without reasoning and considering the circumstances of the case, there is violation of dharma.[32] Naradasmriti says that it becomes necessary to a adopt a method founded on reasoning, because social context decides everything and overrides the sacred law.[33] Arthasastra also says that if sastra comes in conflict with any rational and equitable ruling then the latter shall be the deciding factor beyond the letter of the text.[34]

---

[30] Ibid. p.63.
[31] Manusmriti, 12.106.
[32] Brihaspatismrti, 2.12.
[33] Naradasmriti, 1.40.
[34] Arthasastra, 3. 1.45.

Thus, Dharmasastra is thus not a closed discourse that has no place for correction, adaptation, or innovation on contextual and rational basis. Rather, openness, creativity and an adaptive response to emergent social problems and circumstances is built into the very structure of not only Dharmasastra but also Arthasastra and Nitisastra. Multiplicity and contingent nature of views expressed in different Dharmashastras helped contextual application of plurality-conscious universalistic principles. The Dharmasastras are essentially "rules of interdependence" founded on diversity and unity corresponding to the nature of things and necessary for the maintenance of the cosmic and social order.[35]

Institutionalisation of punishment policy, especially that relating to legal procedure, advanced dramatically during the period of the Gupta empire. This period appears to have been a golden age of institutionalisation of punishment policy. From the many texts that may have been produced during this time, only two are preserved in the manuscript tradition, those ascribed to Yajnavalkya and Narada. Only fragments of the t wo other major texts, those of Brihaspati and Katyayana, which also demonstrate clear advances in legal thought especially with respect to legal procedure, are available in the form of citations in medieval legal digests. In spite of the advances made by these authors, they remained indebted to the two scholars who lived several centuries before them: Kautilya and Manu. Many of the texts produced during the Gupta period can be viewed as commentaries on and developments of their legal thought.

In the matter of the method of settlement of disputes, the four aspects of a lawsuit (metaphorically called the four “legs” or pillars), that reflected both procedure and source, according to the *Naradasmriti* are — virtue (dharma), that is the settlement of dispute on the basis of acceptance of truth by both the parties; judicial proceeding ( vyavahara :), that is the contested ascertainment of right; the evidence of custom (caritra), that is the practice and usage of the locality; and a verdict from the king (rajasasana), that is the king’s proclamation in accordance with dharma].[36]

The king’s role remains central in all aspects of institutionalisation of punishment policy. He approves and notifies the Constitution of the Court, Rules of Evidence, Gradation of law Courts, Validity of Law Suits, People qualified to be Witnesses, Testimony of Witnesses; Assessing the Testimony; False Witnesses; Documentary Evidence; Principles of Jurisprudence; Delay in Court proceedings; Judicial examination; Verdict; Assessment of Evidence; Lawsuits Without Witnesses; Wrong behaviour on the part of Witnesses; Swearing in of Witnesses; Prayashchit; Confession.

There was broad-based variety of adjudicative forums with appropriate hierarchy and supervision and linked to specific communities so that punishment was administered in the suitable socio-cultural atmosphere of the parties. People’s court system and assistance by assessors or jurors had tremendous dynamism that had never posed the problem of judicial delay. Collegiate adjudicative system and assistance of experts in the field of law, technicality and accounts reflected inbuilt safeguards to avoid errors. Humane but stern treatment of witnesses and parties fairly mixed compassion with justice.

---

[35] Ibid. p.216.
[36] Naradsmriti, 1.8.

The prevalence of a variety of courts at various levels was the distinctive feature of the ancient Indian legal system, matching diversity and flexibility in the source of law. There was bifurcation between courts which decided vyaavahaarika (civil) disputes and aparaadhika (criminal) disputes. Those which are omitted in the lists are covered under the title prakirnaka (miscellaneous). All the matters were to be decided in accordance with dharma (law) and local customs and usages. The king's orders not in conflict with dharma can also be a source.

There was a hierarchy of courts as follows: The court presided by the king was the highest court. There were also courts appointed (adhikrita) by the king, presided by the chief justice (pradvivaka). Next to them came in the descending order gana (assembly), shreni (corporation) and kula (family councils). The Brihaspatismriti classifies courts as shaasita (where the king himself presided), mudrita (appointed by the king and using the king's seal), apratishtitha (circuit court) and pratisthita (established in village or town).

According to *Smritichandrika*, a commentary on the Manusmriti, the kula should consist of impartial persons belonging to the family or caste of the litigants, functioning (like a present-day panchayat) to decide disputes amongst the persons belonging to the same family or caste; shreni should consist of a guild or corporation of persons following the same craft, profession or trade; and gana or puga should be an assembly of persons belonging to the same dwelling place but might be belonging to different castes or following different avocations. [37]

In addition, there were practices of resolving disputes through arbitrators or madhyasthas. The Smritis of Manu, Narada and Brihaspati suggest that disputes regarding landed property or boundaries should be decided by neighbours, the inhabitants of the town or village, the other members of the same community and the senior inhabitants of the district. According to the Naradasmriti , "In disputes among merchants, artisans or the like persons and in disputes concerning persons subsisting by agriculture or as dyers, it is impossible for outsiders to pass a sentence and the passing of the sentence must, therefore, be entrusted to persons acquainted with such matters in a cause of this sort".[38]

The family, the guild, and the corporation, fully approved of by the king, decided most of the cases concerning their members, other than those cases relating to grave crimes. Any matter, not coming within the purview of the knowledge of the family guild, or corporation, was to be finally decided by the supervisors, appointed by the king. They were superior in power to the family etc. and the judge superseded the supervisors. Of the family, the guild, the corporation, the supervisors, the judge and the king, the next ones are successively higher in judicial authority than the preceding ones.

Regarding jurisdiction the position was that kula, shreni and gana could decide all disputes except those falling under saahasa. They had no power of imposing corporal punishments and fines. The appellate jurisdiction of gana over shreni and shreni over kula was recognised. The king was the highest court of appeal and his decision was final.

All the courts were collegiate in their functioning. While the king was recognised as a fountain of justice, the Smritis had prohibited him from acting alone in the task of

[37] Courts of India, p.37.
[38] Ibid.

the administration of justice. The collegiate character of the king's court is explicit from Brihaspati 's verse to the effect that king (raja), chief justice (pradvivaka) and judges (sabhyas) are the judicial officers. Shastras contemplated that the king should adjudicate in consultation with the chief justice and puisne judges, although personally responsible for his decision. There was a right of appeal to the king as the last resort.61 According to the Naradasmriti , the king should act in accordance with the opinion of the chief justice.

The villagers had a judicial system of their own at once familiar to and respected by them; the various traders and guilds had a similar system. The presiding officer of the popular courts or guild courts had office either by election or inheritance according to local custom. With him were associated three or five men. In these apparently private courts were settled the affairs of the everyday life. In case of grave crimes or when the condemned party refused to obey the judgment of the local court, the court of the king was concerned with litigation.

Another dimension of the collegiate decision making is the participation of experts in assessing the disputed question of facts. Vyasa has observed that in case of disputes among traders, craftsman, artisans and artists, it is difficult for the courts to arrive at correct decisions in view of the technical problems involved. Hence, experts in the concerned field should be taken as assessors for deciding disputed questions of fact. The Katyayanasmriti states that a few merchants belonging to a guild, who come from good families, bear good character and conduct, who are well advanced in age and free from malice, should be appointed to assist the court in deciding the disputes.

**Rule of Law**

Manusmriti considers punishment policy to be a tremendous force for discipline, hard to be controlled by persons with undisciplined minds, it destroys the King who has swerved from duty, along with his relatives. Then it will afflict his fortress and kingdom, the world along with movable and immovable things, as also the sages and the gods inhabiting the heavenly regions. Therefore punishment shall be given appropriately to men who act unlawfully, after having carefully considered the time and place, as also the strength and learning of the accused. When meted out properly after due investigation, punishment makes all people disciplined and happy; but when meted out without due investigation, it destroys all things.[39]

Punishment policy cannot be justly administered by one whose mind is not disciplined, or who is addicted to sensual objects, or who is demented, or who is avaricious, or whose mind is not disciplined, or who is addicted to sensual objects. Discipline can be administered by one who is pure, who is true to his word, who acts according to the Law, who has good assistants and is wise. The King who metes out punishment in the proper manner prospers in respect of his three aims of virtue, wealth, and pleasure; he who is blinded by affection, unfair, or mean is destroyed by that same punishment.[40]

The qualification of the chief justice and judges there were based on sound principles. A person was required to be well versed in the 18 titles of law and their and proficient in logic, interpretation. Knowledge of Vedas and Smritis capacity to

[39] Manusmriti, 7.29.
[40] Ibid. 7.30.

extract the truth from the judicial proceedings by application of the dharma. The members of the court should not connive with the king when he begins to act unjustly. If they do so, they, along with the king, fall head down into hell. Judges who agree with the king when he proceeds in an unjust manner become party to the sin flowing from the unjust decision.

Having duly ascertained the motive and the time and place, and having taken into consideration the condition of the accused and the nature of the offence, punishment should be given to those deserving punishment. Unjust punishment is destructive of reputation among men and subversive of fame; in the other world also it leads to loss of heaven; he shall therefore avoid it. The king, punishing those who do not deserve to be punished, and not punishing those who deserve to be punished, attains great illfame and goes to hell. The message is very clear, virtue lies in action. Mere words and principles, without insightful action are sure to lead to individual and social degeneration.[41]

A person who knows the Vedic treatise is entitled to become the chief of the army, the king, the arbiter of punishment, and the ruler of the whole world. As a fire, when it has picked up strength, burns up even green trees, so a man who knows the Veda burns up his taints resulting from action. A man who knows the true meaning of the vedic treatise, in whatever order of life he may live, becomes fit for becoming Brahman while he is still in this world.[42]

Those who rely on books are better than the ignorant; those who carry them in their memory are better than those who simply rely on books; those who understand are better than those who simply carry them in their memory; and those who resolutely follow them are better than those who only understand.[43]

Perception, inference, and treatises coming from diverse sources—a man who seeks accuracy with respect to the Law must have a complete understanding of these three. The man who scrutinizes the record of the seers and the teachings of the Law by means of logical reasoning not inconsistent with the Vedic treatise—he alone knows the Law, and no one else.[44]

The principle of proportionality, which was assisted by good counselling and appreciation of facts, was crucial in giving punishment, fixing of fines or considering extenuating circumstance. Similarly, by affirming strongly that in case of doubt punishment will not be imposed, the legal system exhibited great wisdom. The king's duty to act with a sense of proportion in the matter of imposition of punishments shows the link between justice and equity.

The dharmasastra mention the upper and the lower limits of the punishments. The first, medium and highest levels of punishment are mentioned, and the actual punishment imposed has to be limited within the minimum and the maximum laid down in the texts. The reasons for variations are composed of following five

---

[41]Manusmriti, 8.126-131.
[42] Ibid. 12.100-2
[43] Ibid. 12.103
[44] Ibid. 12.105-6

components; Exemption, extenuation, infliction according the prescription, aggravation, and consideration of cumulation, commutation, and other reasons. Among the factors to be considered while inflicting punishment the caste of the offender, knowledge of the offender, his financial condition, age, place, time, and the value of the damage caused were included. All the considerations were collectively taken into account while deciding on punishment.

For instance, the punishment for theft committed by a knowledgeable Sudra was generally eight times the value of the thing stolen and it increased twice for the learned members of the successive higher varnas. Manusmriti says that it becomes increased sixteen times, thirty-two time and sicty four times in case of a Vaisya, a Ksatriya and a Brahamana offender respectively. The punishment could go up to one hundred times or one hundred twenty-eight times in case of the theft having been committed by a Brahaman who knows the unrighteousness of his actions. Thus commission of an offence by brahmana who is fully aware of the unlawful character of the act becomes a reason for the enhancement of his punishment.

Interestingly, Manusmriti also says that someone who had stolen gold becomes instantly pure by quietly repeating once the *Asyavamiya sukta* and the *Sivasankalpa sukta*.[45] *Asyavamiya sukta* in the Rg Veda is one the most philosophical and intriguing sukta of the Vedas and it contains several fundamental principles of the Vedic knowledge tradition which are repeatedly mentioned in the Vedas, Upanisads, and the dharmasastra. Knowledge of this *sukta* by an offender was considered an effective *prayashchit* for the sin committed. Brihaspatismriti says that gradation of fines was subject to modification inconformity with the nature of the offender, and it could be retained as declared or reduced or raised.[46]

This approach of transcending the letter of the law in the light of the spirit of justice reflects the functional character of punishment policy aiming at a benevolent result for both the individual and the society. It reflects the limitation of man made regulations and a notion of higher moral law as the superior principle. The larger discretion in the interests of justice gave scope for application of equity and good conscience.

## Freedom through Law

In the Vedic tradition, creation of order in society facilitates the creation of freedom for the individual. Instead of making autonomy as the foundation of social life, Indian tradition makes order as the foundation of social and individual life. The concept of punishment is inherent in the rules that establish order and hold the society and state together. No punishment, no society, no society no state. Punishment policy is based on rules that integrate the individual, family, society and state.

In the *dharmasastra* the existence of conflicts, disunions, rivalry and factional spirit is considered to be the greatest of all dangers to social cohesion and individual freedom. The bond of civil society is torn asunder when the moral system is disrupted. Hence the greatest political offender and the most criminal sinner is he who by his conduct promotes the breach between those who should normally live in

[45] Manusmriti, 11.251
[46] Brihspatismriti, 20.15.

amity and peace. The general violence of criminal activity is seen in dharmasastra the most insidious threat to the order of law.

Sukraniti considers the main problem with unlawful violence as the threat it poses to the state or other legal authority and the injury it causes to individual persons or groups. Sukraniti provides for action against such offences by the decree issued by the king.[47] According to the dictates of Sukraniti the execution of bad men is real ahimsa i.e., mercy. One is deserted by good people and acquires sins by always not punishing those who ought to be punished, and punishing those who ought not to be, and by being a severe punisher.[48]

A state is a state because it can coerce, restrain, compel. Eliminate control or the coercive element from social life, and the state as an entity vanishes. Punishment policy is the very essence of statal relations. No punishment policy, no state. A sanctionless state is a contradiction in terms. The absence of punishment policy is tantamount to matsya-nyaya or the state of nature. It is clear also that property and dharma do not exist in that non-state. These entities can have their roots only in the state. The whole theory thus consists of three fundamental rules : no punishment policy or sengol, no state; no state, no dharma; and no dharma, no individuality and property.[49]

In Sukraniti, punishment emphasizes rectitude and deterrence over retribution. In fact, punishment policy in this view is what makes law practical at all as it contains a recognition of human imperfection and fallibility. Law in its fullest sense can only exist in the world if punishment policy is there to correct the inevitable failings of human beings. Without punishment policy, law remains an elusive ideal to which no one can aspire. With punishment policy law becomes satya, the truth that upholds social and individual righteousness. Punishment policy simultaneously guarantees the overall stability of the social system and development of the individual.

Sukraniti sees punishment policy as a two edged sword that cuts both ways. On the one hand it is a corrective of social abuses, a moralizer purifier and civilizing agent. As the Sukraniti says it is by the administration of punishment policy that the State can be saved from a reversion to matsyanyaya and utter annihilation and it is by punishment policy the people are set on the right path and they become virtuous and refrain from committing aggression or indulging in untruths. Punishment policy is efficacious moreover in causing the cruel to become mild and the wicked to give up wickedness.

It is good also for preceptors and can bring them to their senses should they happen to be addicted to an extra dose of vanity or unmindful of their own vocations. Finally it is the foundation of civic life, being the ‘great stay of all virtues’ and all the ‘methods and means of statecraft’ would be fruitless without a judicious exercise of punishment policy. Its use as a beneficent agency in social and individual life is therefore unequivocally recommended by Sukra.[50]

---

[47] Sukraniti, p. 40.
[48] ibid. p. 131.
[49] Sarkar, Political Institutions, p. 197
[50] Sarkar, Basic Ideas, p. 513-14

But on the other hand punishment policy is also a most potent instrument of restrain the ruler himself, to the powers that be. The maladmmistration of punishment policy says Kamandaka leads to the fall of the ruler. Manu does not hesitate to declare that punishment policy would smite the king who deviates from his duty from his 'station in life'. It would smite his relatives too together with his castles territories and possessions.[51] The common weal depends therefore on the proper exercise of the punishment policy. Manu would not allow any ill disciplined man to be the administrator of punishment policy. The greatest amount of wisdom accruing from the help of councillors and others is held to be the essential precondition for the handling of this instrument. And here is available the logical check on the eventual absolutism of the dandadhara in the Indian tradition.[52]

In the two edged sword of the punishment policy then we encounter on the one side interests of the State and on the other individual morality, virtue, dharma, etc. In fact, it is to 'educate' man out of the primitive licence and beastly freedom that government has been instituted. The State is designed to correct human vices or restrain them and open out the avenues to a fuller and higher life. And all this is possible only because of punishment policy. The conception of this eternal co-relation in societal existence is one of the profoundest contributions of the political philosophy of the Hindus to human thought.

This concept changes the emphasis from what law restrains to what law enables. It suggests that every legal system must contain morals and ethical elements which can be understood in religious terms.[53] "In accordance with the doctrine of punishment policy, the state is conceived as a pedagogic institution or moral laboratory, so to speak. It is an organization in and through which men's natural vices are purged, and it thereby becomes an effective means to the general uplifting of mankind. The Hindu theorists therefore consider the state to be an institution " necessary " to the human race if man is not to grovel in the condition of *matsya-nyaya* under the law of beasts. Man, if he is to be man, cannot do without political organization. He must have a state and must submit to sanction, coercion and punishment — in a word, to punishment policy".[54]

---

[51] Mausmriti, 7.28-29
[52] Ibid. 7.30.
[53] Sarkar, Political Institutions, p.203
[54] Ibid.

# Select Bibliography


Aiyangar, Rangaswami, *Some Aspects of The Hindu View of Life*, New Delhi: Lifespan, 2018.

---, Rangaswami, *Rajadharma*, Adyar: Adyar Library, 1941.

Altekar, A S, *Sources of Hindu Dharma in its Socio religious Aspects,* Sholapur: Institute of Public Administration, 1952.

Apte V M, *Social and Religious Life in the Grhya Sutras,* Bombay : Popular Book Depot, 1954.

*Arthasastra*, Tr. R P Kangle, Delhi: Motilal Banarasidas, 2021.

*Arthasastra*, Tr. R Shamasastry, Bangalore: Government Press, 1915.

Agarwal, V.S., *The Thousand Syllabled Speech*, Varanasi.:, Prithvi Prakashan, 1963.

---, V.S., *Bharatiya Dharma Mimamsa*, Varanasi: Prithvi Prakashan, 1979.

---, V.S., *Rachna Sanchayan*, New Delhi: Sahitya Academi, 2012.

Arya, Pratibha, *Smritiyon Mein Rajniti aur Arthasastra*, Gyanpur,

*Atharva Veda*, Tr. Damodar Satwalekar, Pardi, Swadhyaya Mandal, 2024.

*Atharva Veda*, Tr. Tulsi Ram, Delhi: Arsha Sahitya, 2023.

Banerjee, Nikunja Vihari*, Studies in the Dharmasastra of Manu***,** New Delhi: Munshiram Manoharlal, 1980.

Banerjee, Suresh Chandra, *A Companion to the Dharmasastra,* New Delhi: D K Printworl, 1998.

Baxi, Upendra, *Towards a sociology of Indian law*. New Delhi: Satvahan, 1986.

Betai, R.S., *Evolution of Law of Crimes in Ancient India*, Delhi: Bharatiya Kala Prakashan, 2003.

*Bhagvadgita,* Tr. S. Radhakrishnan, New Delhi: Harper, 2010.

Bhattacharjee, A.M., *Indian law and the Constitution*. 2nd ed. Calcutta: Eastern Law House, 1994.

Bhattacharya K K, (Trans), *Institutes of Parasara*, Asiatic Society Calcutta, 1887.

Bhattacharyya, Parnasabari, *Conceptualizations in the Manusmrti*, New Delhi: Manohar Publishers, 1996.

Buhler George, (Trans), *The Law of Manu with Extracts from Seven Commentaries,* The Sacred Books of the East Series, No XXV, Delhi: Motilal Banrasi Dass, 2018.

---, George, *The Sacred Laws of the Aryas as Taught in the Schools of Apastamba Gautama Vasistha and Baudhayana* (2 Vols). Delhi: Motilal Banrasi Dass, 2008.

Capra, Frirzof, and Ugo Mattei, *The Ecology of Law: Towards a Legal System in Tune with Nature and Community*, New Delhi: Harper Collins, 2015.

Cardozo, Benjamin, *The Growth of the Law*, New Delhi: Law and Justice, 1924/2020.

---, Benjamin, The Nature of the Judicial Process, Satyam Law, 1921/2021.

Carrel, Alexis, *Man the Unknown*, New Delhi: R Sons, 1935/2019.

Chiba, Masaji, ed. *Asian Indigenous Law*. London: Routledge, 2009.

Coomarswamy, Ananda K. *Spiritual and Temporal Power in the Indian Theory of Government*, New Delhi: DK Publishers, 2013.

Courts of India, Past to Present, Supreme Court of India, Delhi, Publications Division, 2016.

Datta, D.M. *The Six Ways of Knowing,* Delhi, Motilal Banarasi Dass, 2017.

Davis, Jr., Donald R. *The Spirit of Indian Law*. Cambridge: Cambridge University Press, 2010.
Donald R., Jr. 2004. *Dharma* in Practice: *Acara* and Authority in Medieval Dharmasastra. *Journal of Indian Philosophy* 32.5:813–830.
---, Donald R., Jr. "Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India". *Journal of the Economic and Social History of the Orient* 48.1: 92–11,2005.
Day, Terence P. *The Conception of Punishment in Early Indian Literature*. Waterloo: Wilfred Laurier University Press, 1982.
Derrett, J. Duncan M. *Religion, Law, and the State in India*. London: Faber, 1968.
---, J.D.M. *Hindu Law Past and Present*. Calcutta: A. Mukherjee & Co, 1957.
---, J.D.M., *An Introduction to Modern Hindu Law*. London and Bombay: Oxford University Press, 1963.
---, J.D.M. *Essays in classical and Modern Hindu law*. Vol.3. Leiden:Brill, 1977.
Dhavan, Rajeev, '*Dharmasastra and Modern Indian Society: A preliminary exploration'. Journal of the Indian Law Institute*, pp.515-540, Vol.34, No.4 1992.
Dutt, Manmath Nath, *The Dharmasastra, Hindu Religious Codes*, Vol. I-V, New Delhi: Cosmo Publications, 1979.
Dwivedi, Kapildev, *Vedon Mein Rajnitisastra*, Gyanpur: Vishwabharati, 2009.
---, Kapildev, *Vedik Darshan*, Gyanpur: Vishwabharati, 2006.
---, Kapildev, *Vedik Sahitya aur Sanskriti*, Gyanpur: Vishwabharati, 2021.
Einstein, Albert, *Ideas and Opinions*, New York: Three Rivers, 1982.
Gajendragadkar, P.B. '*The historical background and theoretical basis of Indian law*'. In: AIR 1963, Journal section, pp.18-26.
Glen, H. Patrick, *Legal Traditions of the World*, Delhi: Oxford University Press, 2010.
Govt. of India, *Courts of India: Past to Present*, New Delhi: Publications Division, 2016.
Hardas, Balshastri, *Glimpses of Vedic Nation*, Madras: Kamakoti, 1967.
Heisenberg, Werner, Physics and philosophy, New Delhi: Penguin, 1989.
Henrich, Joseph, et al. *The Origin and Psychology of Cooperation*, Annual Review of Psychology, 2021. 72:207-40.
Jagannathan, R. *Dharmic Nation*, New Delhi: Rupa, 2023.
Jayaswal, K. P., *Manu and Yagyavalkya*. New Delhi: Cosmo, 2004.
---, K. P., *Hindu Polity; Constitutional History of India in Hindu Times*. New Delhi: Chaukhamba Publications, 2006.
Jha, Ganganath, *Studies in Hindu Law,* Varanasi: Sampurnananda, 1992.
Jois, Rama, *Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System*. Gurugram: Universal Lexis Nexis, 2022.
---, Rama, *Seeds of Modern Public Law in Ancient Indian Jurisprudence*. 2nd ed. Lucknow: Eastern Book Company, 2000.
---, Rama, *Dharma : The Global Ethic*, Bhartiya Vidya Bhawan, Bombay, 1996.
Jolly, Julius, *Indian Law and Custom*. Varanasi and Delhi: Bhartiya Publishing House, 1975.
Joshi, Lakshmanshastri, *Vaidik Sanskriti ka Vikas*, New Delhi: Sahitya Akademi, 2017.
Kane, P. V. *History of Dharmaśāstra*. 5 vols. Poona: Bori, 1962–75.

Katju, Markandey, *Ancient Indian Jurisprudence*, Speech delivered on 27th November, 2010 at Banaras Hindu University, Varanasi.
Khanna, Madhu, ed., *Rta: The Cosmic Order*, New Delhi: D K Printworld, 2004.
Larivière, Richard W. 'Dharmaśāstra, custom, 'real law' and 'apocryphal' Smrtis'. In: Kőlver, Larivière, Richard W. (ed.) *Studies in Dharmaśāstra*. Calcutta: Firma KLM, 1984.
Lingat, Robert. *The Classical Law of India*, Delhi: Oxford University Press, 1998.
Lombard, Jay, *The Mind of God*, New York, Harmony, 2022.
*Mahabharata*, Tr. R.N. Pandeya, Gorakhpur: Gita Press, 2015.
*Manusmṛti: with 'Manubhāṣya' of Medhātithi*, Jha, Ganganath. 10 vols., 2nd edn. Delhi: Motilal Banarsidass, 2016.
*Markandeya Purana*, Gorakhpur: Gita Press, 2021.
*Matsya Purana*, Gorakhpur: Gita press, 2020.
Menski, Werner. *Hindu Law: Beyond Tradition and Modernity*. Delhi: oxford University Press, 2003.
---, Werner. *Comparative Law in a Global Context*. Cambridge: Cambridge University Press, 2003.
Moghe, S G, *Some Aspects of Studies in Dharmasastra*, Delhi: Bharatiya Kala Prakashan, 2003.
Motwani Kewal, *Manu Dharmasastra: A Sociological and Historical Study,* Madras Ganesh & Co. 1958.
Mukerjee, Radhakamal, *The Philosophy of Social Science*, New Delhi: Radha publications, 2005.
Narang, Sudesh (ed.) *Dharmasastra in contemporary times*. Delhi: Nag Publishers, 1988.
Nath, Kamleshwar, *Glimpses of Ancient Indian Law, Bharatiya Manyaprad,* Vol.4, No.1, 2016, pp. 37-50.
Nazeer, Justice Abdul, *Decolonisation of the Indian Legal System*, Speech delivered in Hyderabad, 26 December 2021.
Nikhilananda, Swami, 'The Realistic Aspect of Indian Spirituality', in Charles A. Moore (ed.), The Indian Mind, Delhi, Motilal Banarasi Dass, 2008.
Nivedita, Sister, *Religion and Dharma*, Kolkata: Advaita Ashram, 2012.
Norenzayan, Ara, et al. *Supernatural norm enforcement*, Journal of Experimental Social Psychology , March 2019.
Olivelle, Patrick, *Dharmasutras: The Law codes of Apastamba, Gautama, Baudhayana and Vasistha*. Delhi et al.: Oxford University Press, 2000.
Pal, Radha Gobind, *The History of Hindu Law*, Calcutta, Calcutta University Press, 1958.
Purohit, S.K. *Ancient Indian legal philosophy. Its relevance to contemporary jurisprudential thought*. New Delhi: Deep & Deep, 1994.
Purzycki, Benjamin, et al. *Moralistic gods, supernatural punishment and the expansion of human sociality*, *Nature,* March 2019.
Radhakrishnan, Sarvepalli. *Indian Philosophy*, Vol. 1. Delhi: Oxford, 2019.
---. *The Spirit of Religion*, New Delhi, Hind Pocket Books, 2009.
---, *The Principal Upanisads*, New Delhi: Oxford, 2017.
---*, An Idealist View of Life,* New Delhi: Harper Collins, 2012.
*Rg Veda,* Tr. Dayananda Saraswati, New Delhi: Hasananda, 2007.
*Rg Veda, Tr*. Damodar Datwalekar, Pardi, Swadhyaya Mandal, 2024.
*Rg Veda, Tr*. Tulsi Ram, Delhi: Arsha Sahitya, 2023.

*Rg Veda*, Tr. Stephanie Jamison and Joel Brereton, New York, Oxford Univesity Press, 2021.
Rocher, Ludo. "*Hindu Law and Religion: Where to Draw the Line*?" in Malik Ram Felicitation Volume, 1972.
Rovelli, Carlo, *Seven Brief Lessons on Physics*, New Delhi: Penguin, 2016.
Sarat A. and T. Kearns, eds. *Law in Everyday Life*, eds. Ann Arbor: University of Michigan press, 1993.
Sarkar, Benoy Kumar, *The Positive Background of Hindu Sociology*, Motilal Banarasidass, Delhi. 1985.
---, Benoy Kumar, *The Political Institutions and Theories of the Hindus*, , Verlag, Leipzig. 1922.
---, Benoy Kumar. "*Some Basic Ideas of Political thinking in Ancient India"*, in The Cultural History of India, Vol. 2, 509-529. 2016.
---, Benoy Kumar. "*The Indian Theory of the State*," Political Science Quarterly 36(1) (1921): 79–90.
Sarkar, Kishori Lal, *The Mimansa Rules of Interpretation*, Tagore Lectures, 1905.
Sastry, V. Kutumba, "Semantics Of Dharma", in *Dharma the Categorial Imperative*, ed. Ashok Vohra, New Delhi: DK Printworld, 2005.
Satyprakashananda, Swami, *Methods of Knowledge*, Kolkata: Advaita, 2022.
Schauer, Frederick, *The Proof: Uses of Evidence in Law, Politics, and Everything Else*, Cambridge, Harvard University press, 2022.
Sen, Prosonto Kumar, *Penology Old and New*, Tagore Law Lectures, Calcutta: Longman Green's, 1943.
Singh, Chhatrapati ,'*Dharmasastras and contemporary jurisprudence*'. *Journal of the Indian Law Institute*, pp.179-188, Vol.32 No.2, 1990.
Sivaramayya, B. '*Dharmaśāstra and Contemporary Indian Law*'. In Narang, Sudesh (ed.): *Dharmasastra in Contemporary Times*. Delhi: Nag Publishers, pp.67-76. 1988.
Spellman, John, *Political Theory of Ancient India*, Oxford: Clarendon, 1964.
*Sukraniti* , Tr. Benoy Kumar Sarkar, Munshiram Manoharlal, New Delhi. 1975.
Swain, Brij Kishore, *Dharmasastra: A Link Between Tradition and Modernity,* Varanasi: Chaukhamba Publications, 2003.
---, Brij Kishore, *Dharmasastra: An Introductory Analysis,* Delhi: Akshay Prakashan, 2004.
Tagore, Rabibdra Nath, *Sadhana*, Chennai: Naven Books, 2021.
*Tirukkural*, Tr. Gopal Krishna Gandhi, New Delhi: Aleph Book, 2015.
Tripathi, Upendra Kumar, Anoop Kumar, eds., *Vedic Traditions of Law and Legal System*, Varanasi: Center for Vedic Sciences, 2022.
*Vayu Purana*, Tr. T.V. Tagare, Delhi: Motilal Banarasidass, 1997.
Vishwabandhu, *Ved Shastra Samgraha*, New Delhi: Sahitya Akademi, 2017.
*Yajnavalkya*, Tr. Patrick Oliville, Cambridge, Harvard university Press, 2019.
*Yajurveda*, Tr. Damodar Satwalekar, Pardi, Swadhyaya Mandal, 2024.
*Yajurveda,* Tr. Tulsi Ram, Delhi: Arsha Sahitya, 2023.